UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

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R.H., a minor, by and through her guardian ad litem, Sheila Brown; ESTATE OF ERIC JAY HAMES, by and through its personal representative, Crystal Dunlap Bennett,

Plaintiffs,

v.

CITY OF REDDING, a public entity; JOE ROSSI, an individual; KIP KINNEAVY, an individual; JAY GUTERDING, an individual; BRETT LEONARD, an individual; and DOES 5 through 20 inclusive,

Defendants.

No. 2:20-cv-01435 WBS DMC

MEMORANDUM AND ORDER RE: DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

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Plaintiffs R.H., a minor, by and through her guardian ad litem, and the Estate of Eric Jay Hames, by and through its personal representative, brought this action, alleging violations of federal and state law, against the City of Redding ("the

City"), and City of Redding police officers Joe Rossi ("Rossi"), Kip Kinneavy ("Kinneavy"), Jay Guterding ("Guterding"), and Brett Leonard ("Leonard"). This suit arises from the fatal shooting of Eric Hames by Rossi, Kinneavy, Guterding, and Leonard. The complaint contains claims for: (1) excessive force in violation of the Fourth Amendment, 42 U.S.C. § 1983, (2) unwarranted interference with the right to familial association in violation of the Fourteenth Amendment, 42 U.S.C. § 1983, (3) municipal liability under Monell v. Department of Social Services, 436 U.S. 658 (1978),[1] (4) battery, (5) violation of the Tom Bane Civil Rights Act, Cal. Civ. Code § 52.1, and (6) negligence. Before the court is the defendants' motion for summary judgment. (Docket No. 29.)

I. Factual Background

On August 27, 2018, Rossi was on patrol and heard a call over the police radio about a man, later identified as Hames, who was in the middle of the roadway obstructing traffic at an intersection in Redding, California. (Pls.' Resp. to Defs.' Statement of Undisputed Facts ("DSUF") at No. 1 (Docket No. 31); Defs.' Resp. to Pls.' Statement of Undisputed Facts ("PSUF") at No. 1 (Docket No. 35).) Dispatch services for the police department had received multiple calls about Hames stating he was "jumping in front of cars," and "yelling and spitting on passing vehicles." (Decl. of Maria Nozzolino ("Nozzolino Decl."), Ex. A of Ex. D (Decl. of Chris Smyrnos) at 4. (Docket

[1] In opposition to defendants' motion, plaintiffs have withdrawn their Monell liability claim against the City of Redding. (Pls.' Opp'n at 16 (Docket No. 30).) Therefore, the court will not address it in this order.

No. 29-3).)

Rossi arrived at the intersection and observed Hames throw a glass bottle in the air, yell incomprehensibly, and take a six-inch knife out from a sheath on his belt. (DSUF at No. 3; PSUF at Nos. 2-3; Decl. of Neil Gehlawat (Gehlawat Decl.), Ex. C, Video Summary of Subject Shooting (Docket No. 32).) Hames, initially positioned closer to the passenger side of Rossi's patrol vehicle, moved no closer than 10 feet away from Rossi's driver side door. (PSUF at Nos. 4-5.) Over the PA system, Rossi told Hames to put the knife down and Hames did not comply. (DSUF at No. 5.) Rossi's initial encounter with Hames lasted approximately 30 seconds to one minute before Hames ran in the direction of a nearby shopping center. (PSUF at No. 7.)

Rossi followed Hames in his patrol vehicle and communicated over the dispatch radio, alerting other units that Hames was armed with a knife and had fled into the shopping center. (DSUF at No. 8; PSUF at No. 9.) Rossi encountered Hames at the back of a Domino's Pizza building alongside Larkspur Lane and exited his patrol vehicle with his handgun drawn. (PSUF at No. 10.) Guterding, Leonard, and Kinneavy arrived within seconds and joined Rossi in a semi-circle around Hames, with their handguns drawn, as Hames stood near two AC units at the back of the building with his arms crossed and the knife in his hand. (DSUF at No. 12; Gehlawat Decl., Ex. C.) Kinneavy turned back and retrieved a shotgun from his nearby parked patrol vehicle. (DSUF at No. 14; Gehlawat Decl., Ex. C.)

Rossi and Kinneavy gave Hames verbal commands to drop the knife. (DSUF at No. 15.) Hames walked three steps from the

AC unit in the direction of Guterding, with the knife still in his hand and his arms crossed. (See id. at No. 17; PSUF at No. 28; Gehlawat Decl., Exs. A and B, videos of shooting.) Rossi, Guterding, Kinneavy, and Leonard shot Hames. (DSUF at Nos. 18-21; Gehlawat Decl., Exs. A and B.) Rossi fired two or three shots, Guterding fired three shots, Kinneavy fired four rounds from his shotgun, and Leonard fired one shot. (PSUF at Nos. 14, 15, 34, 40.)

Hames was 23 feet, 10 inches from Guterding and more than 15-20 feet from Leonard when he was shot, though the officers' recollections place Hames at a closer distance. (Gehlawat Decl., Ex. C.; DSUF at Nos. 18-21.) Approximately 60 seconds passed from the time Rossi encountered Hames at the Domino's Pizza to the time he was shot. (Gehlawat Decl., Ex. C.)

II. Legal Standard

Summary judgment is proper "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The party moving for summary judgment bears the initial burden of establishing the absence of a genuine issue of material fact and can satisfy this burden by presenting evidence that negates an essential element of the non-moving party's case. See Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). Alternatively, the movant can demonstrate that the non-moving party cannot provide evidence to support an essential element upon which it will bear the burden of proof at trial. Id. If the moving party has properly supported its motion, the burden shifts to the non-moving party to set forth specific facts to

show that there is a genuine issue for trial. See id. at 324. Any inferences drawn from the underlying facts must, however, be viewed in the light most favorable to the party opposing the motion. See Matsuhita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

III. Qualified Immunity on Plaintiffs' Federal Claims

In actions under 42 U.S.C. § 1983, the doctrine of qualified immunity "protects government officials 'from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" Pearson v. Callahan, 555 U.S. 223, 231 (2009) (quoting Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982)). Qualified "immunity protects all but the plainly incompetent or those who knowingly violate the law." White v. Pauly, 137 S. Ct. 548, 551 (2017) (quotations omitted).

The court has carefully reviewed the evidence submitted by both parties, which includes video exhibits showing the entirety of the encounter at multiple angles, depositions, and expert reports. (See Gehlawat Decl., Exs. A-C.) Based on the evidence and the existing case law, the court cannot conclude that the officers' acted in a manner that was "plainly incompetent" or "knowingly violat[ing] the law." See White, 137 S. Ct. at 551.

To determine whether an officer is entitled to qualified immunity, the court considers: (1) whether there has been a violation of a constitutional right; and (2) whether the officers' conduct violated "clearly established" federal law. See Sharp v. Cnty. of Orange, 871 F.3d 901, 909 (9th Cir.

2017) (citing Kirkpatrick v. Cnty. of Washoe, 843 F.3d 784, 788 (9th Cir. 2016)). The court has the discretion to decide which prong of qualified immunity to address first and, if analysis of one prong proves dispositive, the court need not analyze the other. See Pearson, 555 U.S. at 236. Here, the court will exercise its discretion to analyze the second prong first: whether the officers' conduct violated a clearly established right.

The clearly established inquiry "serves the aim of refining the legal standard and is solely a question of law for the judge." Tortu v. Las Vegas Metro. Police Dep't, 556 F.3d 1075, 1085 (9th Cir. 2009). The Supreme Court has noted that the law "does not require a case directly on point for a right to be clearly established, [but] existing precedent must have placed the statutory or constitutional question beyond debate." White, 137 S. Ct. at 551 (quotations and citations omitted).

When determining whether the right at issue has been clearly established, the court may not "define clearly established law at a high level of generality." See Kisela v. Hughes, 138 S. Ct. 1148, 1152 (2018) (quoting Ashcroft v. Al-Kidd, 563 U.S. 731, 742 (2011)). Rather, "the clearly established law at issue must be particularized to the facts of the case." White, 137 S. Ct. at 552. This is particularly important in excessive force cases because "[i]t is sometimes difficult for an officer to determine how the relevant legal doctrine, here excessive force, will apply to the factual situation the officer confronts." Mullenix v. Luna, 136 S. Ct. 305, 308 (2015).

With the framework above in mind, the court analyzes whether the law was clearly established such that reasonable officers on August 27, 2018 would have known that the use of deadly force is unreasonable against an armed suspect who was acting erratically, had ignored commands, fled from an initial encounter with an officer, moved toward an officer with a knife in hand, and caused the officers to fear for their safety.

The case in which the court finds the circumstances to be most analogous to those here is Kisela v. Hughes, 138 S. Ct. 1148 (2018). In Kisela, officers responded to reports of a woman with a knife acting erratically in a neighborhood. Id. at 1151. Upon arrival, the officers saw the suspect come out of the home with a large kitchen knife, and stand within six feet, and "striking distance," of another woman. See id. at 1151, 1154. There, as here, the suspect did not hold up the knife or run toward anyone but ignored the officers' orders to drop the weapon. Id. at 1151. There, as here, the officers shot the suspect within a minute of arriving on the scene. Id. The Supreme Court reversed the district court's denial of qualified immunity because the law was not clearly established that the use of deadly force in such a situation violated the decedent's constitutional rights. Id. at 1154-55.

Given the similarity to the facts in Kisela, decided just four months prior to the incident here, the court concludes that reasonable officers would not have been put on notice that use of deadly force in the instant case was unreasonable. Though the distance between Hames and the officers was greater than the six feet in Kisela, there is no clearly established law from the

Ninth Circuit or the Supreme Court that establishes a minimum distance between the suspect and the officers before they are justified in using deadly force.

Courts do take the distance between the suspect and the officers into account when evaluating the totality of the circumstances. For example, although it was decided after the incident in this case, in Ventura v. Rutledge, 978 F.3d 1088 (9th Cir. 2020), the court concluded the officer was entitled to qualified immunity where the officer shot a suspect who was 10-15 feet away. Id. at 1090. The officer had received domestic violence related reports about the suspect and the suspect was armed with a knife, ignoring commands, and advancing toward the officer. Id. The court determined there was no clearly established law demonstrating the officer's use of deadly force was unconstitutional. Id. at 1092. The 23 feet and 10 inches between the officers and Hames is relatively close in range to the distance in Ventura. Accord Buchanan v. City of San Jose, 782 F. App'x 589 (9th Cir. 2019) (holding officers did not use excessive force when they shot a man armed with a knife who was 55 feet away and advancing toward the officers).

The court's finding of qualified immunity is further supported by Blanford v. Sacramento County, 406 F.3d 1110 (9th Cir. 2005). Blanford involved a man whom officers, after receiving several reports about, observed walking through a neighborhood with a sword and behaving erratically. Blanford, 406 F.3d at 1112. As in the instant case, the man failed to heed warnings or commands. See id. at 1112-13; (DSUF at No. 16.) The man eventually tried to enter a home through the front door and

then through the backyard. Id. at 1113. Officers believed the man posed an imminent threat to anyone that could be in the home or the backyard, though he had never advanced toward the officers. Id. The officers shot the man multiple times as he tried to enter the home. Id. at 1113-14. Only later did the officers learn that he was trying to enter his own home and did not hear the officers because he had headphones in. Id. at 1112-14. The Ninth Circuit concluded the use of deadly force did not violate the Fourth Amendment. Id. at 1119.

Hames posed at least as much of a threat as the man in Blanford. Hames had ignored multiple commands to drop his knife and had fled from his initial encounter with Rossi. Unlike the officers in Blanford who were uncertain if anyone was even in the home when the man began to enter, here, the officers observed Hames moving toward one of them with his knife. The circumstances here could be viewed by a reasonable officer as more threatening.

Plaintiffs bear the burden of "proving that the right allegedly violated was clearly established at the time of the official's allegedly impermissible conduct." Camarillo v. McCarthy, 998 F.2d 638, 639 (9th Cir. 1993). Plaintiffs primarily rely on three cases — Tennessee v. Garner, 105 S. Ct. 1694 (1985), Glenn v. Washington County, 673 F.3d 864 (9th Cir. 2011), and Espinosa v. City of San Francisco, 598 F.3d 528 (9th Cir. 2010) — to further their argument against qualified immunity. However, these cases are insufficient to put reasonable officers in these circumstances on notice that their conduct was violating clearly established law.

The leading case of Tennessee v. Garner simply sets out the general proposition that when a law enforcement officer is pursuing a fleeing suspect the officer may not use deadly force unless the officer has probable cause to believe the suspect poses a significant threat of death or serious physical injury to the officer or others. Garner, 105 S. Ct. at 1697. It does not speak to any set of circumstances similar to those presented in this case. To the contrary, the facts here differ significantly from the conduct the Supreme Court found to be unconstitutional in Garner, which involved the shooting of a clearly unarmed suspect in the back of the head while he was running away from the officers. Id.

In Glenn, officers responded to a call from family members and friends about an intoxicated, suicidal teenager standing outside his home. Glenn, 673 F.3d at 867. The teen was holding a pocketknife to his own neck and would not drop it, but was not threatening anyone else. Id. at 873. While the teenager stood still, one of the officers fired beanbag rounds at him. Id. at 869. As he was being hit with the beanbag rounds, the teenager took one or two steps toward the home, in which his parents remained, and the officers fired 11 shots at him. Id. at 879. The Ninth Circuit reversed the grant of summary judgment for the Glenn defendants and determined that there were material questions of fact that precluded a conclusion that the force used by the officers, the beanbag rounds and the deadly force, was reasonable as a matter of law. Id. at 879-80. This case is distinguishable from Glenn in that Hames was not a threat just to himself, as the teen was in Glenn, but posed an immediate threat

to the officers. Hames was advancing toward Guterding with a knife and not standing still like the teenager in Glenn.

Plaintiffs' reliance on Espinosa is also insufficient. In Espinosa, officers used deadly force in an attempt to make an arrest of an unarmed suspect who was hiding in an attic and resisting arrest when officers searched a home. Espinosa, 598 F.3d at 533. The Ninth Circuit affirmed the district court's denial of qualified immunity because there was evidence that the officers' initial entry into the premises violated the occupant's Fourth Amendment right and that such illegal entry provoked the confrontation which resulted in the shooting. Id. at 539. Here, unlike in Espinosa, there is no suggestion that the officers improperly on the scene or that they did anything to provoke Hames' conduct, and they were not approaching an unarmed suspect, rather one who was indisputably armed with a knife.

Even if the officers were mistaken about whether Hames was going to harm them, the reasonableness inquiry recognizes "that it is inevitable that law enforcement officials will in some cases reasonably but mistakenly conclude" that their conduct comports with the Constitution and thus shields officials from liability when their mistake is reasonable. See Anderson v. Creighton, 483 U.S. 635, 641 (1987). Given the precedent outlined above, the court concludes that at the time of the shooting, a reasonable officer in these circumstances would not have known that he was violating Hames' constitutional rights. To the contrary, clearly established law would signal to a reasonable officer that it was permissible to use deadly force in these circumstances.

Accordingly, the court will grant summary judgment to defendants Rossi, Kinneavy, Guterding, and Leonard on the Fourth and Fourteenth Amendment claims on the ground of qualified immunity.[2]

IV. State Law Claims

Because the court will grant summary judgment for defendants on plaintiffs' federal claims, the court no longer has federal question jurisdiction, and there is no suggestion that there is diversity jurisdiction in this case. Federal courts have "supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." 28 U.S.C. § 1367(a). A district court "may decline to exercise supplemental jurisdiction . . . [if] the district court has dismissed all claims over which it has original jurisdiction." 28 U.S.C. § 1367(c); see also Acri v. Varian Assocs., Inc., 114 F.3d 999, 1001 n.3 (9th Cir. 1997) (en banc) (explaining that a district court may decide sua sponte to decline to exercise supplemental jurisdiction).

The Supreme Court has stated that "in the usual case in which all federal-law claims are eliminated before trial, the balance of factors to be considered under the pendent jurisdiction doctrine – judicial economy, convenience, fairness and comity – will point toward declining to exercise jurisdiction

[2] Because the court determines the defendants are entitled to qualified immunity based on the second prong of the analysis, it does not address whether plaintiffs' constitutional rights have been violated.

over the remaining state-law claims." Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343, 350 n.7 (1988).

Here, comity strongly weighs in favor of declining to exercise supplemental jurisdiction over plaintiffs' state law claims. The state courts are fully competent to adjudicate such claims. Some of plaintiffs' claims raise particularly complex questions of state law, such as the Tom Bane Civil Rights Act, which are better left for California courts to resolve.

As for judicial economy, plaintiffs' state law claims have not been the subject of any significant litigation in this case, as this is the first instance in which the merits of plaintiffs' claims are being considered. Judicial economy does not weigh in favor of exercising supplemental jurisdiction. And finally, convenience and fairness do not weigh in favor of exercising supplemental jurisdiction over plaintiffs' remaining state law claims. The federal and state fora are equally convenient for the parties. There is no reason to doubt that the state court will provide an equally fair adjudication of the issues. There is nothing to prevent plaintiffs from refiling their state law claims against defendants in state court, and any additional cost or delay resulting therefrom should be minimal.[3] Accordingly, the court declines to exercise supplemental jurisdiction and will dismiss plaintiffs' remaining state law

[3] "[T]he period of limitations for any claim asserted under [28 U.S.C. § 1367(a)], and for any other claim in the same action that is voluntarily dismissed at the same time or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period." 28 U.S.C. § 1367(d).

claims without prejudice to refiling in state court.

IT IS THEREFORE ORDERED that defendants' motion for summary judgment (Docket No. 29) be, and the same hereby is, GRANTED on the ground of qualified immunity on plaintiffs' federal claims under 42 U.S.C. § 1983 against defendants Rossi, Kinneavy, Guterding, and Leonard.

IT IS FURTHER ORDERED that plaintiffs' remaining state law claims against defendants be, and the same hereby are, DISMISSED WITHOUT PREJUDICE to refiling in state court.

The Clerk shall enter Judgment in favor of all defendants in accordance with this Order.

Dated: February 10, 2022

WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE